

THE DEFENSE OF HAINS OUTLINED

He Had No Idea That His Brother Carried a Revolver

WENT TO BAYSIDE TO
PURCHASE PROPERTY

**Judge Holds That Defendant
Could Be Guilty of Murder in
First Degree, Even if His
Brother Is Absolutely Ac-
quitted of Any Crime**
Whatever

[Special to The Times-Dispatch.]

NEW YORK, December 28.—In line with the prevailing conviction, Hains has so far characterized the Hains trial in Flushing, in which, for example, the closing days of the prosecution were devoted to hearing out the contention of the defense, the latter, at the opening day to-day, received what appeared to be a foreboding outlook for the form of a ruling by Justice Crane. Eugene W. Young, of counsel for the defense, in his formal application for the dismissal of the indictments against Jenkins Hains, had raised the contention that Justice Captain James C. Hains, Jr., who did the actual shooting on August 15th, should be adjudged insane and that therefore he had committed no crime. Thornton Hains could not be held as an accessory. Justice Crane immediately put Clarence Hains, Jr., under the

"This man may be guilty of murder in the first degree," the justice said, "as a proposition of law, although the man who held the revolver was insane, and so was not guilty of murder. I may say to the jury now that this man

being taken for his own acts and designs, and for the acts or designs of any other."

Court Qualifies Agreement.

Mr. Young continued his argument with the contention that failure to interfere in the commission of a crime is no proof of guilt. In this the court agreed with him, but added this qualification:

"Previous acts and declarations may, however, be taken in connection with noninterference as proof of a criminal design. Also a subsequent declaration of gratification at the act itself may not be taken as evidence of complicity in the act, but it may be taken as evidence, but it may be considered along with his acts and declarations previous to and at the time of the commission of the crime. I will say further at this time that a man may be guilty of a murder committed by a lunatic if he has encouraged it knowingly and intentionally."

"A man who is present at the commission of a crime, and who, knowing the act and its consequences, aids and abets it. In my opinion is not an accessory under the common law, but

Opens Up Everything.
On the other hand, the court made rulings which, in the stated opinion of the lawyers for the defense, opens up the whole dirty story of the matters leading up to the tragedy, as well as paving the way for bringing Captain Hains's mental condition before the grand jury.

the present jury. In this direction Justice Crane said in effect that he would not permit the introduction of any evidence tending to show the relations of William E. Annis with Mrs. Peter C. Hains, Jr., but that he would accept anything that was told either the defendant or his brother. "This is admissible as evidence of Captain Hains's sanity and also as showing tending to show with what motive

The defendant went to Bayside. Mr. Shay's attorney, Mr. Thornton, emphatically declared the people's case in and Mr. Young's motions to dismiss the indictments had been denied. Joseph A. Shay opened the defense's case. Mr. Shay's address could not be regarded as particularly effective. He spent considerable time in unappreciated pathos, and, as outlined by him, the case to be put in by the attorneys for Thornton and Hains presents a similarly confused picture. The appearance of the case which was presented by the district attorney. When court adjourned Thursday afternoon it was hard to read in the proceedings a logical story of Thornton and Hains' guilt of the crime with which they were charged. The address which was made at the trial was equally hard to derive a logical story of the defendant's innocence.

Strikes a Noug.

At the outset Mr. Shay ran up

against the district attorney's objections, sustained by Justice Crane against his characterization of the prosecution's testimony as "flimsy, biased, prejudiced, contradictory, suspicious and doubtful."

He struck the same snag when he attacked the hiring of James W. Dayton, a member of the Yacht Club, to assist Mr. Darrin in the prosecution of the Hains brothers.

Mr. Shay said the defendant was

born in Washington, 1860, and told of General Hains's war record. After mentioning Thornton Hains's early life, he

aid that he was married in 1896, and of his child's deformity, and his care of her incidentally remarking that she was insane, are the only little girl was the innocent cause of her father's present predicament—since the defendant went to the Bayside to see about buying a plot of ground on which to build a home for the water or the sake of the child's health.

The Point of Defense.

This point which Mr. Shay will argue will conclusively show that the defendant and his brother had no intention of going to the Bay side to build a home for the child.

Mr. Evers, who had property in the vicinity for sale was there. He will maintain that by this evidence the defense will shatter the State's contention that the two

Mrs. Peter C. Hains, mother of the man now on trial for his life, is ill in New York. Counsel desire to call the mother to the witness stand to testify that after Captain Hains's trouble with his wife she told Thornton to keep careful watch of her.

The health of Mrs. Hains, it is said, would hardly permit of her to come to court.

Joseph Shay, associate counsel for Thornton J. Hains, in opening the case for the defense, charged that the gov-